

**Agenda Item #: 6-F-2**

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

**AGENDA ITEM SUMMARY**

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Meeting Date: June 2, 2009	[ ]	Consent	[ X ]	Regular
	[ ]	Workshop	[ ]	Public Hearing

Department:  
Submitted By:       **Engineering & Public Works**  
Submitted For:       **County Engineer**

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**I. EXECUTIVE BRIEF**

**Motion and Title: Staff recommends:** the Board reconsider the prior Board direction relating to the paving of Fargo Avenue and direct that no action be taken on the paving of Fargo Avenue except through a future MSTU process.

**Summary:** The Board determined in the April 21<sup>st</sup> board meeting, at the request of Commissioner Santamaria, that the Board reconsider its prior direction for the Fargo Avenue paving assessment options. The matter was to be placed on a future agenda. This item does that, and it will also cover the history of road paving and associated assessments in the Ranchettes and enable the Board to provide appropriate direction to staff. District 6(MRE)

**Background and Justification:** The paving of Fargo Avenue (Fargo) has been an issue before the BCC for many months. Several assertions have been made publicly and on a privately maintained web site relating to the issues. Staff will attempt to focus the discussion on issues pertinent to Fargo Avenue and other roads within, and outside, the current MSTU program. Staff believes that there are several major points of discussion/direction required. A summary of each is presented below with a staff recommendation.

- 1) *Does the recently completed county road paving project put more water into Fargo from the side streets than does the historic drainage pattern?* **No.** Staff has recently completed extensive surveys along Fargo Avenue and the intersecting streets to determine actual elevations of the road, including swales and intersections where the County has recently completed work. **Based on this information, we conclude that the recently completed project has in fact improved the drainage situation for Fargo Avenue. No further action on Fargo is required to address drainage associated with the recently completed paving project.**
  
- 2) *Is there any funding available from the existing project to fund work on Fargo?* **No.** Based on the above finding that the recent paving project had no negative impact on Fargo, no funds from the current four-street assessment can be spent on Fargo. **Thus, any funds not expended on the current project will be returned to the county budget and a new, reduced assessment roll will be presented, which, after its adoption by the Board, will result in lower assessments for the 168 assessed residents of the four streets.**
  
- 3) *Was the petition process and subsequent contract award and assessment process for the four-street paving project illegal?* **No.** The Board received petitions from more than 51% of the benefiting properties, followed the standard bid-and-contract award process in awarding to the low bidder, appropriately notified all affected property owners as part of the establishment of the assessment roll, and did not exceed the budget identified in the MSTU program for the Ranchette paving project. (Continued on Page 3)

**Attachments:**

1.     Location Map

**Recommended By:** \_\_\_\_\_

**Division Director**

Date

**Approved By:**     Dy T. Webb    

County Engineer

6/1/09

Date

**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact: \*\*See Comments Below\*\***

Fiscal Years	2009	2010	2011	2012	2013
Capital Expenditures	-0-	-0-	-0-	-0-	-0-
Operating Costs	-0-	-0-	-0-	-0-	-0-
External Revenues	-0-	-0-	-0-	-0-	-0-
Program Income (County)	-0-	-0-	-0-	-0-	-0-
In-Kind Match (County)	-0-	-0-	-0-	-0-	-0-
NET FISCAL IMPACT	*-0-	-0-	-0-	-0-	-0-
# ADDITIONAL FTE	-0-	-0-	-0-	-0-	-0-
POSITIONS (CUMULATIVE)	-0-	-0-	-0-	-0-	-0-

Is Item Included in Current Budget? Yes  No

**Budget Account No.:**

Fund            Dept            Unit            Object

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

\*\*\*This item has no fiscal impact if staff recommendation is followed. The Fargo Ave. from El Paso to Yearling project is estimated to cost \$360,500 including design. This project is not currently included in the MSTU program and there are no available funds in the program to be assigned to this project. If the project is approved, a funding source will have to be identified (general fund contingency?) to set up funding which would be repaid by the residents over a set period.

C. Departmental Fiscal Review: Atwillhite

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Administration Comments:**

MSJ 6/11/09                      John J. Jacobson 6/11/09  
 OFMB                                      Contract Administration

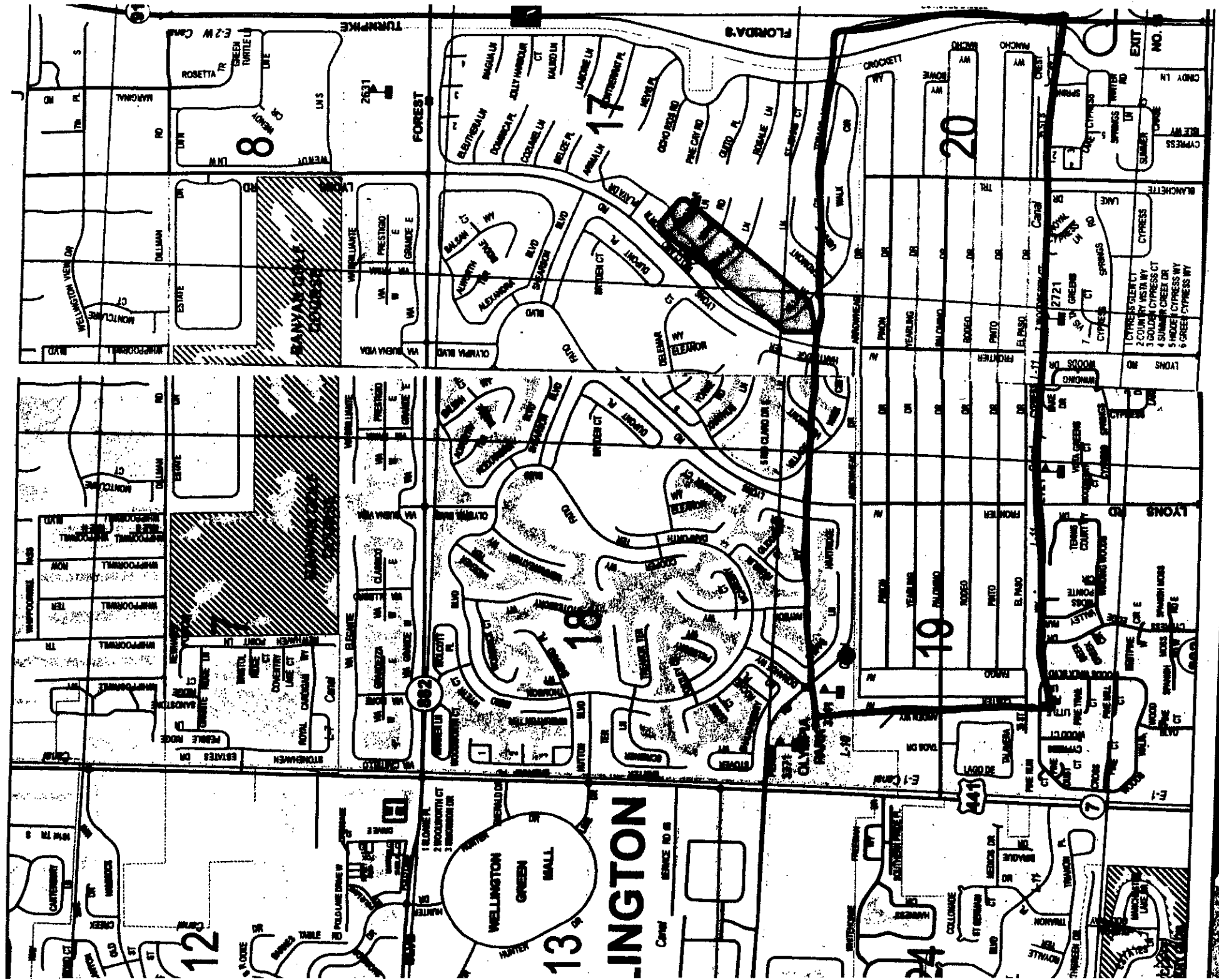
*(Handwritten notes: NO 6/11/09, CA 6/11/09, JP 6/11/09)*

**B. Legal Sufficiency:**

Morgan 6/01/09  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
 Department Director



12

12

8

FOREST

13

WELLINGTON GREEN MALL

WELLINGTON

Canal SERVICE RD 66

18

19

20

FLORIDA'S TURNPIKE

443

7

EXIT NO.

EXIT

EXIT

EXIT

EXIT

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EXIT

EXIT

EXIT

7

## Background and Justification: (Continued Page 3)

- 4) *Who was responsible for initiating the petition process for the western section of Rodeo Avenue (Rodeo) – after the Board had directed months earlier that no new petitions were to be sent out? **The County Engineer.*** Staff recommended the County Commission pay for design plans for 3½ miles of roads in the Ranchettes. Included in the design was the western ½-mile portion of Rodeo. However, as the design was being completed, staff realized the ½-mile section that should have been designed was the eastern section of Pinto Avenue. The Engineer decided that, rather than just shelve the plans for the ½-mile western section of Rodeo, the residents along this portion should be given the opportunity to reconsider their decision to not participate in the paving. Thus, a petition was sent to the 24 residents. A majority of the residents did express support, and the ½-mile western Rodeo section was included in the final 4-mile project bid. Bids were opened, and the entire project (including the western Rodeo section) came in well within the budget established for the original 3½-mile project. Staff recommended, and the Board subsequently approved, the assessment roll and construction contract without specific mention of the inclusion of the Rodeo section in the final project.
- 5) *What should happen to Fargo? **Direct that no action be taken on Fargo until a new MSTU process (including an identified funding source) is put in place.*** At least 11 other roads completed the County's petitioning process over the last few years, including two within the Ranchettes (El Paso and Pancho), and achieved more than 51% neighborhood support for paving. However, in the 2007 repetitioning process, those 11 roads were removed from the MSTU program. (Property owners were given the opportunity to reconsider their support for paving after cost estimates were updated. If fewer than 50% of property owners on a particular street then supported paving, that street was removed from the program.) **If new funding is identified for the MSTU program, staff recommends that these 11 streets be given an opportunity to reapply before any new roads, such as Fargo or Arrowhead, are allowed into the MSTU program. Staff also recommends that any assessment associated with Fargo be based on the benefiting-lot approach instead of the benefiting-front-footage approach. The benefiting-lot approach will result in a more equitable assignment of benefits to the lots on and off Fargo.**
- 6) *Should the Board direct staff to take the steps necessary to fund the paving of Fargo (and to what limits?)? **Board direction is required.*** The County participation in the project is the key component. If no County dollars are to be included (as per the 100% residential approach), then staff can find a source for the up-front money – but the Board needs to decide how to best allocate the approximately \$400,000 cost within the Ranchette neighborhood. Specific direction is required as to the amount to assess to the 12 benefiting properties on Fargo and the amount to assess the other portion of the neighborhood (up to 240 properties). Direction is also requested relating to the petitioning process – who should receive petitions prior to establishing the assessment roll?

### PRIOR BOARD DIRECTION AND TIMELINE

Money left over from the four-street paving project was expected to be spent on the Fargo paving project. The Board directed staff to petition eight affected residents along Fargo Avenue (El Paso – Yearling) to find out if they wished to participate in an assessment process for paving Fargo at a cost of \$15,000 for each affected property owner. Commissioner Santamaria later asked the Board to instead consider a lower assessment amount for those eight Fargo properties—approximately \$7,400 per property. **It was determined that, because the current project had no negative impact on Fargo, the proposal to expend funds from the current project is no longer legally justified and applicable.**

This Board item will enable the Board to review the history of roads in the Ranchettes, look at the impacts of the current Ranchettes paving project on the Fargo Avenue drainage, determine why or if Fargo should receive funding ahead of other projects within or outside the MSTU program, and, if required, determine who should be assessed for the potential paving of Fargo.

## Background and Justification: (Continued Page 4)

The following is a summary of key events relating to road projects in the Ranchettes

- 1989 **Palomino and Blanchette** paving completed
- Sept 1995 **Pinion** (Fargo – Blanchette) initial petitions received
- April 2002 **El Paso** (Fargo – Blanchette) initial petitions received
- April 2003 **Yearling** (Fargo – Blanchette) initial petitions received
- May 2003 **Pinion** (Fargo – Blanchette) paving completed
- July 2003 **El Paso** (Fargo – Blanchette) and **Yearling** (Fargo – Blanchette) design contract signed
- July 2004 **Rodeo** (Frontier – Blanchette) initial petitions received
- October 2004 **Pinto** (Fargo – Blanchette) initial petitions received
- August 2005 **Pinto** (Frontier – Blanchette) and **Rodeo** (Fargo – Blanchette) design contract signed – incorrect road segments included in contract
- September 2005 **Palm Beach County sent Mr. Schaller formal county petitions (at his request) to be circulated by him to residents for the paving of Rodeo (Fargo – Frontier) and Fargo (Palomino – El Paso) Note: No petitions (for or against) were ever returned to PBC**
- December 2006 BCC nullified all existing MSTU petitions (except CCRT projects) and required new petitions for projects to be considered for future MSTU funding
- February 2008 Re-petitions received for **El Paso** (Fargo – Blanchette), **Yearling** (Fargo – Blanchette), **Pinto** (Fargo – Blanchette) and **Rodeo** (Frontier – Blanchette)
- March 2008 Standard county petitions, initiated by county staff, sent out to residents along **Rodeo** (Fargo – Frontier) requesting interest in paving with the intent to include the section in the upcoming bid
- May 2008 Standard county petitions returned/received from residents along **Rodeo** (Fargo – Frontier) with the majority requesting paving (including Mr. Schaller)
- May 13, 2008 (Mr. Schaller email to Comm. Santamaria): “All residents on the east side of **Fargo**, where intersecting roads will be paved, are entitled to the pavement (sic) of **Fargo**”
- May 21, 2008 (Commissioner Santamaria email to Mr. Schaller): “We will be stopping our paving at the east edge of the **Fargo** right of way for each road. **Fargo** was never part of the MSTU requests in this area and should only be considered for an MSTU project after all the currently approved countywide MSTU projects planned for the next five years are funded. “
- May 29, 2008 (Mr. Schaller email to County Administrator Weisman): “**I once again formally and respectfully request that the property owners along Fargo Avenue be petitioned for the paving of Fargo Avenue.**” (emphasis in original document)
- June 1, 2008 County received a neighborhood petition (not the standard County petition) from property owners on and bordering **Fargo** Avenue requesting petition for paving and drainage improvements along **Fargo** Avenue (**note**: no dollar amount addressed in petition)
- June 2008 Bids opened for **Yearling, Rodeo, Pinto** and **El Paso** (Fargo – Blanchette)
- July 2008 BCC awards design contract for **Pinto** (Fargo – Frontier)
- July 2008 Regarding Fargo potential paving - Commissioner Koons requested staff give a “good faith effort” to “catch up with the existing project”

## Background and Justification(Continued Page 5)

- September 2008 BCC approves the assessment role and construction contract for **Yearling, Rodeo, Pinto** and **El Paso** (Fargo – Blanchette)
- December 2008 County receives cost estimate (\$70k) to design **Fargo** (Pinion – El Paso)
- December 2008 (Mr. Schaller email to BCC): "I respectfully request that you pass the changes to the MSTU ordinance and include **Fargo** Avenue as quickly as possible in the current roads construction project."
- December 2008: MSTU ordinance changed to require 100% assessment of the benefiting property owners
- January 2009 (Mrs. Parker (Ranchette resident on Pancho) email to Commissioner Santamaria): "Also recently I heard that **Lyons (Frontier)** and **Fargo** on the west side had a meeting with yourself and they are now getting their roads paved. We just feel that if it was offered to one section of our neighborhood it should have been offered to both." Note: Mrs. Parker had previously (2005/2006) circulated petitions for **El Paso** (Blanchette – Pancho) and **Pancho** (El Paso – Pinto) and these were the subject of her email.
- February 2009: Neighborhood petition (not the standard County petition) from **Arrowhead** residents requesting their road be paved (Note: no dollar amount addressed in petition)
- March 2009: Engineering and OFMB discuss loan options (including from the Sunshine Fund) to obtain funds for new potential MSTU projects (including **Fargo**)
- March 2009 (George Webb email to BCC): "... I need to inform you that the MSTU program does not have sufficient funds to add any new projects to the program." "We have determined that for the \$375,000 project that over 125 neighbors should be assessed – not just the 12 that live along the road. So even if Mr. Schaller states that he represents the neighborhood, we have never had any petition from the residents that will be assessed supporting the project."
- March 25, 2009 (Mr. Weisman email to Commissioner Santamaria): "**When you called earlier this week, you said that you thought that the Board had approved doing Fargo as an assessment project on the basis of assessing 100% of the project costs on residents. That never did occur, though it came close.**" (emphasis added)
- April 7, 2009 BCC heard the Ranchette item and directed staff to determine if assessing the entire neighborhood met the legal basis for assessing properties. If not, the Engineering Department was to begin the petitioning process for the eight properties along **Fargo** to determine if more than 50% would accept a \$15,000 assessment.
- April 15, 2009 Memo from George Webb to BCC – legal basis not met, Engineering to send out petitions on April 22
- April 21, 2009 Commissioner Santamaria requests Board reconsider previous direction regarding the petitioning of property owners – Board agrees to place item on future agenda
- April 24, 2009 Mr. Schaller distribution of informational packet to BCC – "East and West road intersections were graded to an elevated height and **Fargo** was paved with road base. The raised intersections create water retention areas and pooling as a result of the "T".
- May 2009 Survey data provides elevations along **Fargo** (Yearling – El Paso) and the intersecting streets showing no negative drainage impact
- June 2, 2009 Item to be considered by BCC

## **Background and Justification: (Continued Page 6)**

### **Discussion:**

*Does the recently completed county road paving project impact the Fargo Avenue drainage? The recently completed project has in fact improved the drainage situation for Fargo Avenue.* Staff has recently completed extensive surveys along Fargo Avenue to determine actual elevations of the road, including swales and intersections where the County has recently completed work. We also reviewed the prior east/west road configurations and the Fargo Avenue grades and have concluded the following:

#### **Water flowing into Fargo from the side streets**

Some of the original east/west shell rock roads allow drainage from approximately 200' east of Fargo to drain west into Fargo. The shell rock roads did not have a "crown" (a raised center) and, because of grading, eventually became almost flat. (This was confirmed by a long-time resident when he spoke to the Board on the Fargo issue.) Swales along the roads were intended to provide some drainage, but these were fairly flat and functioned poorly. The new project significantly reworked the drainage: Some water from about 100' east of Fargo does drain to the west. However, because the County raised the center of the east/west roads, most excess water drains to the sides, where sizable swales were built to catch and hold that water. **After reviewing the before-and-after drainage situation, it is our opinion that less water flows from the side roads into Fargo than before our construction.**

#### **Water flowing along Fargo**

Drainage inlets installed along Fargo halfway between Yearling and Pinion move water first into a drainage ditch and then into the LWDD L-10 canal. This is intended to drain the section of Fargo between Palomino and Arrowhead. The road slopes slightly down and away from Palomino toward the drains and slopes down and away from Arrowhead toward the drains. South of Palomino the concept is repeated. The road slopes slightly away from Palomino to the south, toward two inlets between Rodeo and Pinto. These inlets feed into a drainage ditch and then into the LWDD L-11 canal. At the south end, Fargo slopes slightly down and away from El Paso toward the two inlets. Our intersections were constructed to continue to allow this flow of water, and the survey information shows the intersections do not create "high points" along Fargo. Thus, our construction did not impede the "flow" along Fargo nor add additional flow.

While we assume that there once were swales along Fargo (lower than the road), today the areas along the side are in many instances higher than the road, most likely as a result of years of grading. This condition traps the water along Fargo and existed long before the County did any work in the Fargo right-of-way. We also improved the drainage along Fargo by digging out the inlets which were, in some cases, completely blocked by more than 18" of dirt and debris (making them incapable of accepting water). We also inspected the private east/west drainage ditches and found them to be significantly overgrown. This growth also inhibits the flow of water off Fargo. **In summary, we believe that the intersection construction in the Fargo right-of-way did not inhibit the flow of water in any fashion and, with the work that the County has done, the drainage for Fargo is better than when we started our project.**

#### **Petition and construction process for Rodeo (Fargo – Frontier)**

*Was the County wrong in sending out a petition to determine resident interest in a paving assessment that would use a recently completed set of construction plans? We believe that the neighborhood benefited from having another section of road paved and the county did not have to put a set of completed plans "on the shelf." The County had received interest previously from at least one Ranchette resident in having Rodeo paved.*

The County received petitions from the entire section of Pinto (Fargo – Blanchette) and from the eastern half of Rodeo (Frontier – Blanchette) in mid-2004. The Board approved a contract for design in August 2005 for the entire section of Rodeo (not just the eastern section) and for the eastern section of Pinto (opposite of what the petition indicated). As the design was being completed in 2008, staff discovered that the design mistakenly covered the western section of Rodeo that had not been covered by petitions. Correspondingly, the design did not cover the eastern section of Pinto that had petitions. Staff immediately negotiated and the Board approved an additional design contract that covered the missing section of Pinto. The contract was

**Background and Justification:** (Continued Page 7)

straightforward in that the design concept (including drainage) already used for 3½ miles of roads would be repeated for this half-mile section. So as not to waste the plans prepared for the non-petitioned section of Rodeo, staff (at the direction of the County Engineer) also sent a letter containing a petition to the Rodeo residents (including Mr. Schaller) along the western section covered by the completed plans to determine if there was potential interest in including that section in the upcoming bid.

With sufficient interest, staff intended to include that section in the bid and determine, after the bid was open, if there were sufficient funds available to cover the construction cost of this new section. In our letter, there was no guarantee that the western Rodeo section would be included, and staff was prepared to recommend the section not be built if the total bid exceeded available budget. The majority of the residents (along with Mr. Schaller) did submit petitions supporting the paving of the western section of Rodeo.

The bids came in very low, and the western Rodeo section was easily covered by the available budget. The assessment process proceeded and ultimately included four roads (El Paso, Pinto, Rodeo and Yearling with identical limits (Fargo – Blanchette)). The Board authorized the award of the construction contract and the establishment of the assessment for the benefiting properties after receiving a positive recommendation from staff. The following table summarizes the process described above.

	PINTO EAST	PINTO WEST	RODEO EAST	RODEO WEST
PETITION 2004	X	X	X	
DESIGN 2005	X		X	X
PETITION 2008				X
DESIGN 2008		X		
CONSTRUCTION 2008	X	X	X	X

Staff should have notified the Board that the petitions for the western section of Rodeo were generated by county staff, but since the petitions did not commit the County to fund the new section, the appropriate course of action remained somewhat flexible. Staff should also have informed the Board that the new section of Rodeo was being included in the assessment. The County Administrator has met with the County Engineer and provided clear direction that the full disclosure of issues is required whenever staff initiates actions or recommendations that ultimately result in votes of the Board.

**Should Fargo be paved now?**

Unlike other roads in the Ranchettes, the County never received a county petition from the Fargo residents. As shown in the timeline, in 2005, Mr. Schaller visited our offices to inquire how to get Fargo paved south of Palomino and how to get Rodeo paved between Fargo and Frontier. He was told he had to show neighborhood support and was sent our standard county petition. However no copies of the petition were ever returned.

If Fargo had been included in the current project, existing County policy would have allowed the corner lots to be assessed for their frontage on only one of each lot's two sides. If Fargo were paved later, the corner lots would be assessed for the frontage along Fargo and not given "credit" for having paid for the east/west frontage. Thus the corner lots would pay twice while other lots in the Ranchettes would have only paid for the road directly in front of the property. This assessment policy is a strong incentive for corner lot owners (such as Mr. Schaller) to push for the inclusion of Fargo in the current contract.

Staff believes that Fargo is quite different from the "typical" MSTU road in that many residents of other parts of the Ranchettes drive on Fargo. Thus, staff believes that the Board should not use the typical front footage assessment process for Fargo and instead recommends using the "benefiting lot" assessment process. This approach would prevent those corner lot owners who do not have direct Fargo access from being assessed as primary beneficiaries. Staff also recommends that those corner lots be included in a group of "secondary" beneficiaries of the Fargo paving. Over 240 properties could potentially be included in this secondary group.



## **Background and Justification: (Continued Page 8)**

Property owners on at least 10 other roads in the county, including one project in the Ranchettes, have signed petitions to have their roads paved. In 2006/2007, the County asked these petitioners if they still wanted their roads paved, even though their assessments would almost double because of higher paving costs. None of those petitioners chose to continue at that time.

Paving costs have since declined significantly. The County could ask those property owners if they are still interested in having their roads paved. However, the fact remains that there is no county money to "front" the design and construction for any of those projects. Several million dollars would be needed to fund the various designs and associated construction. The County would have the option of borrowing the required funds and then assessing the residents for repayment.

**Staff believes that Fargo should not be funded for paving when other similar county roads remain unfunded. Staff also recommends the Board establish the benefiting-lot assessment method for addressing the Fargo assessment when the Board determines it is appropriate to consider paving Fargo.**

### **Alternate Board direction to staff**

If the Board desires to fund the paving of Fargo, staff needs specific direction on the process the Board wants to use. If Fargo is to be paved between El Paso and Arrowhead, there are 12 directly benefiting properties on Fargo and approximately 120 additional properties along six east/west roads between Fargo and Frontier that the Board could determine also would benefit from the paving of Fargo. Another approximately 120 properties are between Frontier and Blanchette and the Board could also determine if they benefit. Some combination of these properties will need to be assessed for the Fargo paving. The Board could determine that all properties along the east/west roads equally benefit, while properties along Fargo benefit more substantially. Staff also needs direction on whether the Board wants to send out petitions to the entire group of benefiting property owners or just those benefiting properties along Fargo – and not inform the other properties until it is time to assess them. Assuming a \$400,000 project cost, potential cost allocations follows:

100% assessment – require the 12 properties on Fargo to pay \$15,000 and assess the remainder (\$220,000) equally to the 240 other properties that could be expected to benefit from the paving of Fargo. This works out to approximately \$920 per property. This concept would equally assess the residents that recently had paving in front of their properties (El Paso, Pinto, Rodeo, Yearling), residents along a road that was paved in 2003 using the MSTU program (Pinion) and residents along a shell rock road that is not scheduled to become part of the MSTU program (Arrowhead).

100% assessment – require the 12 properties on Fargo to be assessed (\$7400 + \$1235 = \$8635) and assess equally the 240 other properties that could be expected to benefit from the paving of Fargo. This works out to approximately \$1235 per property. This concept would assess the residents that recently had paving in front of their properties (El Paso, Pinto, Rodeo, Yearling), residents along a road that was paved in 2003 using the MSTU program (Pinion) and residents along a shell rock road that is not scheduled to become part of the MSTU program (Arrowhead).

The Board has previously heard from neighborhood residents not living on Fargo that they do not believe it is "fair" for them to be assessed for the paving of Fargo. Staff would not be surprised if a number of residents expressed this position when the Board ultimately holds an assessment roll hearing for Fargo.

**Staff believes there should be no County funds (other than up-front dollars) used for the paving and that the project should be 100% assessed to the benefiting Ranchette properties. Board direction is required (now or in the future) as to who should be assessed and what petitioning process should be used.**